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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

8 United States of America,  
9 Plaintiff,

CR-12-02259-TUC-CKJ (MAA)

**REPORT AND RECOMMENDATION**

10 v.

11 Ismael Alfredo Velasquez,  
12 Defendant.  
13

14 The Amended Petition to Revoke Supervised Release (Doc. 280) was referred to  
15 Magistrate Judge Michael Ambri. Doc. 264. The Amended Petition alleges that Defendant  
16 Ismael Alfredo Velasquez committed new crimes, left the federal judicial district where he  
17 was authorized to reside without prior permission, and changed his residence without  
18 giving prior notification. Doc. 280-1, p. 2. An evidentiary hearing was held on July 8,  
19 2025. Doc. 281. Defendant was present with counsel. Doc. 281. Government's Exhibits  
20 1 and 2 were admitted into evidence without objection. *Id.* (supervised release conditions).  
21 Government's Exhibits 3 and 4 were admitted over defense objection. *Id.* (California  
22 charging documents). US Probation Officer Jill Abril testified for the government. *Id.*  
23 Defendant Velasquez testified for himself. *Id.*

24 Upon consideration of the evidence, the Magistrate Judge recommends the District  
25 Court find the government did not establish Defendant violated Mandatory Condition #1  
26 of his supervised release prohibiting him from committing a federal, state or local crime  
27 but did establish he violated Standard Condition #2 prohibiting him from leaving the  
28 judicial district where he resides without first getting permission from the court or the

1 probation officer and did violate Standard Condition #7 prohibiting him from changing his  
 2 residence without prior notification. Doc. 280-1, p. 2.

### 3 Factual Background

4 After a jury trial, Defendant was found guilty of “violating Title 21, U.S.C. §846  
 5 and 841(a)(1) & (b)(1)(A)(i), Conspiracy to Possess with Intent to Distribute Heroin, a  
 6 Class A Felony offense, as charged in Count 1 of the Indictment; Title 21, U.S.C.  
 7 §841(a)(1) and (b)(1)(A)(i), Possession with Intent to Distribute Heroin, a Class A Felony  
 8 offense, as charged in Count 2 of the Indictment; Title 21, U.S.C. §952(a) and §960 (a)(1)  
 9 & (b)(1)(A), and §963, Conspiracy to Import of [sic] Heroin, a Class A Felony offense, as  
 10 charged in Count 3 of the Indictment; [and] Title 21, U.S.C. §952(a) and §960(a)(1) &  
 11 (b)(1)(A), Importation of Heroin, a Class A Felony offense, as charged in Count 4 of the  
 12 Indictment.” Judgment, Doc. 202, p. 1.

13 The Court sentenced Defendant to 120 months in custody with credit for time served  
 14 and 60 months of supervised release. Doc. 202.

15 Defendant’s term of supervised release started May 17, 2023, and was to end  
 16 January 25, 2029. Doc. 280-1, p. 1. On July 8, 2024, the probation officer filed an amended  
 17 petition to revoke supervised release alleging that Defendant violated Mandatory Condition  
 18 #1 and Standard Conditions #2 and #7. Doc. 280-1, p. 2. Mandatory Condition #1 states:  
 19 “You must not commit another federal, state or local crime.” *Id.* Standard Condition #2  
 20 states: “You must not knowingly leave the federal judicial district where you are authorized  
 21 to reside without first getting permission from the court or the probation officer.” *Id.*  
 22 Standard Condition #7 states: “If you plan to change where you live . . . you must notify  
 23 the probation officer at least 10 days before the change.” *Id.*

### 24 Evidentiary Hearing

25 **Probation Officer Jill Abril:** Abril testified that she has been a United States  
 26 Probation Officer for 19 years. Transcript, Doc. 287, p. 4. She currently is Velasquez’s  
 27 probation officer. Doc. 287, p. 5. Abril laid the foundation for the government’s Exhibit  
 28 1: Velasquez’s judgment including Mandatory Condition 1 and Standard Conditions 2 and

1 7. Doc. 287, p. 6. Abril explained that the government's Exhibit 2 is a copy of the  
2 judgment with her signature and Velasquez's signature showing that she reviewed the  
3 conditions of supervision with him. Doc. 287, p. 7. Exhibits 1 and 2 were admitted into  
4 evidence. Doc. 287, pp. 6-8.

5 In December of 2024, Abril attempted to contact Velasquez to arrange for her next  
6 home visit, but she was initially unable to make contact through phone or text. Doc. 287,  
7 p. 9. The leasing office reported that they were in the process of an eviction, but Velasquez  
8 later sent Abril a message stating that "he was just doing well, nothing to report." Doc.  
9 287, p. 10. Abril tried to telephone Velasquez, "but the phone had no service." Doc. 287,  
10 p. 10. She then filed her initial petition to revoke on February 7, 2025. *Id.*; Doc. 267. She  
11 filed an amended petition on July 8, 2025. Doc. 280.

12 In January of 2025, Abril spoke with Velasquez, who reported that he "was just  
13 released from custody." Doc. 287, p. 10. Abril obtained a Criminal Complaint from  
14 Merced, California, that charged Velasquez by name and date of birth with Criminal  
15 Threats and Assault. Doc. 287, pp. 11-12; Exhibit 3. The complaint was offered at the  
16 hearing as Government's Exhibit 3. Doc. 287, pp. 11-12. Velasquez's counsel objected on  
17 the grounds of foundation, but the court overruled the objection. Doc. 287, pp. 12-13.  
18 Abril also obtained from Merced County pretrial a probable cause report from the Dos  
19 Palos Police Department, which was offered as Government's Exhibit 4. Doc. 287, pp. 13-  
20 14. The report includes the defendant's name and date of birth and supports the charges in  
21 the Criminal Complaint. Doc. 287, p. 14; Exhibit 4. The report references the correct  
22 names of the defendant's mother and stepfather. Doc. 287, pp. 14-15.

23 The government moved to admit Exhibit 4 into evidence, but the defendant objected  
24 "under the confrontation clause." Doc. 287, p. 15. The government argued that the Exhibit  
25 should be admitted because hearsay is admissible at a revocation hearing and the document  
26 bears "indicia of reliability" indicating that it is what it purports to be: a probable cause  
27 statement taken from the defendant's family members. Doc. 287, p. 15.

28 The government's counsel explained that he did not try to bring the officer who

1 signed the complaint to court because “their information is fully put in the complaint and  
2 they’re responding to a call after the facts that compromise the charges.” Doc. 287, p. 18.  
3 The court admitted Exhibit 4 because hearsay is admissible in a revocation hearing and the  
4 document is what it proports to be: a probable cause statement taken by an officer related  
5 to an alleged domestic assault committed by the defendant. Doc. 287, pp. 18-19. Abril  
6 testified that Velasquez did not make further contact with her prior to his arrest in Tucson.  
7 Doc. 287, p. 19.

8 On cross-examination, Abril testified that she had not spoken to Velasquez’s mother  
9 or father. Doc. 287, p. 20. She spoke to Velasquez’s sister, but the sister was not present  
10 during the alleged assault. Doc. 287, pp. 20-21.

11 **Ismael Alfredo Velasquez:** The defendant testified that he did leave his place of  
12 residence but he was compelled to do so. Doc. 287, p. 25. He stated he was “raped” in his  
13 apartment. Doc. 287, p. 25. He said he was “abused” and “beat up” and “was going  
14 through a lot.” Doc. 287, p. 25. He explained that he “asked probation if they could help  
15 me out,” but he did not “get any help, so [he] left.” Doc. 287, p. 25. He maintains that he  
16 left because he was scared and in fear for his life. Doc. 287, p. 25. He testified that he  
17 “left messages, voice messages, [and] text messages.” Doc. 287, p. 25. He stated, “I’m  
18 not denying the allegations . . . [b]ut it’s just I was scared.” Doc. 287, p. 25. He did not  
19 deny leaving for California, but he explained that he became homeless and had no help.  
20 Doc. 287, p. 27.

21 On cross-examination, Velasquez stated that his mother’s name is Maria Velasquez  
22 and his stepfather is Leopoldo. Doc. 287, pp. 27-28. They live in Dos Palos, California in  
23 Merced County. Doc. 287, p. 28.

#### 24 Analysis

25 The Court may revoke supervised release if it “finds by a preponderance of the  
26 evidence that the defendant violated a condition of release.” *United States v. Perez*, 526  
27 F.3d 543, 547 (9th Cir. 2008) (citing, among other things, 18 U.S.C. § 3583(e)(3)). The  
28 preponderance standard is met where “the relevant fact is more likely true than not.”

1 *United States v. Collins*, 109 F.3d 1413, 1420 (9th Cir. 1997).

2 At the evidentiary hearing, the government offered Exhibits 3 and 4. Doc. 287, pp.  
 3 11-13, 13-19. Exhibit 3 is a Criminal Complaint filed in the Merced County Superior  
 4 Court, CA, charging Defendant with “PC422: Criminal Threats – Felony” and  
 5 “PC245(a)(4): Assault by Means of Force Likely to Produce Great Bodily Injury – Felony.”  
 6 Exhibit 3. Exhibit 4 is a probable cause statement authored by Officer Brittany Ruiz, Dos  
 7 Palos Police Department. Exhibit 4. In that Exhibit, Ruiz states that she spoke to Maria  
 8 Velasquez, Defendant’s mother. Exhibit 4. According to Ruiz, Maria stated that  
 9 Defendant “put his left arm around her throat and began choking her and said he was trying  
 10 to help her.” *Id.* Maria further stated that she called her husband Leopoldo to come into  
 11 the kitchen, and Defendant let her go and “said that he would kill her and Leopoldo.” *Id.*  
 12 The government argues that this Exhibit establishes that Velazquez violated Condition #1  
 13 of his supervised release: that is, he committed another offense. Doc. 287, pp. 28-29.

14 “The Federal Rules of Evidence do not strictly apply in supervised release  
 15 revocation hearings.” *United States v. Garcia*, 2024 WL 844389, at \*4 (D. Ariz. Jan. 26,  
 16 2024) (citing *United States v. Verduzco*, 330 F.3d 1182, 1185 (9th Cir. 2003); Fed. R.  
 17 Evid. 1101(d)(3)); report and recommendation adopted, 2024 WL 841016 (D. Ariz. Feb.  
 18 28, 2024). “A court may therefore consider hearsay evidence, provided the court’s ultimate  
 19 determination is based on ‘credible evidence’ and ‘verified facts.’” *Garcia* at \*4 (citing  
 20 *United States v. Perez*, 526 F.3d 543, 547 (9th Cir. 2008)). “Although there is no absolute  
 21 right at a revocation hearing to confront testimonial witnesses under *Crawford v.*  
 22 *Washington*, 541 U.S. 36, 68-69 (2004), a defendant is entitled to ‘a fair and meaningful  
 23 opportunity to impeach the evidence’ offered to establish an alleged violation to assure that  
 24 any finding of a violation is based on verified facts and reliable information.” *Garcia* at  
 25 \*4 (citing *United States v. Martin*, 984 F.2d 308, 310 (9th Cir. 1993)). The court finds that  
 26 while Exhibit 3 and Exhibit 4 are what they purport to be – a Criminal Complaint filed in  
 27 Merced County Superior Court and a probable cause statement authored by Officer  
 28 Brittany Ruiz – they do not establish by a preponderance of the evidence that Velasquez

1 violated Mandatory Condition #1: “You shall not commit another federal, state, or local  
2 crime during the term of supervision.” Doc. 287, p. 6.

3 The Court finds that Exhibit 4 records statements made by Velasquez’s mother,  
4 Maria, to Officer Ruiz. The content of those statements, however, do not provide the  
5 indicia of reliability sufficient to establish a violation of Condition #1 by a preponderance  
6 of the evidence.

7 According to Ruiz, “Maria stated that she was in the kitchen washing dishes and her  
8 son, Velasquez, was sitting at the kitchen table, Velasquez got up and walked to Maria and  
9 put his left arm around her throat and began choking her and said he was trying to help  
10 her.” Exhibit 4. There is no explanation as to why Velasquez would start choking his  
11 mother. There is no indication that he was upset or that they were having an argument.  
12 His purported statement that he was “trying to help her” makes no sense without context,  
13 which has not been provided. *Id.*

14 Maria stated that she “was in fear for her life,” was choked “for approximately three  
15 minutes,” and “began to see stars.” Exhibit 4. Ruiz, however, says nothing about Maria’s  
16 demeanor when she made her statements. She does not state that Maria appeared fearful  
17 or shaken. There is no indication that Maria’s statements might fall under the “excited  
18 utterances” hearsay exception, which would be some evidence that her statements were  
19 reliable. *See* Fed.R.Evid. 803(2).

20 Ruiz did check “Maria’s neck for injury” but she “did not locate any visible  
21 injuries.” Exhibit 4. Maria “declined medical attention.” *Id.* While it is possible that  
22 Maria was choked for three minutes without showing visible injuries, the fact that Ruiz  
23 could see no evidence of choking does not lend credence to Maria’s narrative.

24 Maria further stated that Velasquez threatened that he would kill her and her  
25 husband, “Lepoldo.” Exhibit 4; (spelled “Leopoldo” in transcript, Doc. 287, pp. 27-28)  
26 Then, he “sat back down at the kitchen table.” Exhibit 4. Maria did not explain why  
27 Velasquez would make such a statement and then sit back down without taking any further  
28 action.

1 Finally, the court notes that the document is titled Probable Cause Narrative.  
 2 Exhibit 4. Presumably it is what it purports to be, a narrative of “probable cause,” which  
 3 is a lower standard of proof than a “preponderance of the evidence.” *United States v.*  
 4 *Gourde*, 440 F.3d 1065, 1069 (9th Cir. 2006). The court finds that the government has not  
 5 proven that Velasquez violated Mandatory Condition #1 by a preponderance of the  
 6 evidence. Doc. 287, p. 6; *see, e.g., United States v. Garcia*, 2024 WL 844389, at \*4 (D.  
 7 Ariz. Jan. 26, 2024) (The government failed to prove by a preponderance of the evidence  
 8 that the defendant violated the terms of his supervised release where “the police report does  
 9 not note: (1) who owned the car; (2) whether there were other people in the car; (3) whether  
 10 the defendant had the key for the car; or (4) where the pill and drug paraphernalia were  
 11 found in the car.”), report and recommendation adopted, 2024 WL 841016 (D. Ariz. Feb.  
 12 28, 2024); *but see, e.g., United States v. Orozco*, 2024 WL 418152, at \*1, 4 (D. Ariz. Feb.  
 13 5, 2024) (The statements made by the defendant’s girlfriend that she was assaulted by the  
 14 defendant bore “indicia of reliability” where they were supported by “photographs  
 15 depicting redness and swelling on [her] face, shoulder, and arm” and she “initially  
 16 presented as ‘crying,’ ‘hysterical,’ ‘upset,’ and ‘breathing heavily’ as if she were ‘going to  
 17 hyperventilate.’”), *aff’d*, 2025 WL 2028317 (9th Cir. July 21, 2025)).

18 The court does find based on the testimony of Probation Officer Abril and the  
 19 defendant’s admissions that Velasquez violated Standard Condition #2: “You must not  
 20 knowingly leave the federal judicial district where you are authorized to reside without first  
 21 getting permission from the court or the probation officer” and Standard Condition #7: “If  
 22 you plan to change where you live . . . you must notify the probation officer at least 10 days  
 23 before the change.” Doc. 287, pp. 6-7.

#### 24 Recommendation

25 Based on the foregoing and pursuant to 28 U.S.C. § 636(b) and Local R. Crim. P.  
 26 57.6(d)(4), the Magistrate Judge RECOMMENDS that the District Court, after an  
 27 independent review of the record, find that Defendant violated Standard Conditions #2 and  
 28 #7 of his probation. Doc. 280.



1 Pursuant to 28 U.S.C. § 636(b), any party may serve and file written objections with  
2 the District Court within fourteen (14) days of being served with a copy of this Report and  
3 Recommendation. If objections are not timely filed, they may be deemed waived.

4 The Local Rules provide for the filing of a response to an objection. They do not  
5 permit the filing of a reply without leave of the District Court.

6 Dated this 18th day of August, 2025.

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11 Honorable Michael A. Ambri  
12 United States Magistrate Judge  
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